Supreme Court, U. S.
FILED
JAN 21 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-357

LINMARK ASSOCIATES, INC. and
WILLIAM MELLMAN,

Petitioners,

v.

THE TOWNSHIP OF WILLINGBORO and
GERALD DALY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS

MYRON H. GOTTLIEB,
KESSLER, TUTEK and GOTTLIEB,
Counsel for Respondents,

325 Farnsworth Avenue,
Bordentown, New Jersey 08505

N.J. Appellate Printing Co., Inc., South Plainfield, New Jersey (201) 753-0200

TABLE OF CONTENTS

Questions Presented 1

Statement of the Case 2

A. Historically Willingboro's housing pattern has been fully integrated 2

B. Whenever racial conflict emerged, Township Council acted positively to minimize and, hopefully, eliminate any discord 3

C. To combat a developing fear psychology, Township Council prohibited "for sale" signs 3

D. Several reasons were expressed by a Township Council for approving the ordinance, including a desire to maintain an integrated housing pattern in the community 6

E. After adoption of the ordinance, the fear psychology subsided although as many homes were being sold after as before the ordinance was adopted 7

F. The District Court concluded that the ordinance was unconstitutional while the Court of Appeals disagreed 8

Summary of Argument 10

ARGUMENT:

I. Willingboro Township Council acted properly in prohibiting "for sale" signs 12

A. The provision and maintenance of open housing is a national goal 12

B. Preservation of integration is consistent with open housing 16

TABLE OF CONTENTS

ARGUMENT:

C. Segregated housing has practical ramifications which cannot be tolerated 17

D. Experience has shown that human fears often turn integrated communities into resegregated ones 18

E. Willingboro was showing the symptoms of the initial stage of resegregation and effectively acted to retard this movement 20

II. An ordinance prohibiting "for sale" signs in an effort to combat a fear psychology leading to the resegregation of a community does not violate the first and fourteenth amendments 27

A. Willingboro's ordinance advances a significant governmental interest—the halting of resegregation 28

B. Willingboro's ordinance, in advancing a significant governmental interest, is a reasonable restriction on commercial advertising 29

Conclusion 36

Exhibit A 37

CASES CITED:

Barrick Realty, Incorporated v. City of Gary, Indiana, 491 F.2d 161 (7 Cir. 1974) 21, 26

Bigelow v. Virginia, 421 U.S. 809 (1975) 27-28, 32

TABLE OF CONTENTS

CASES CITED:

Browns v. State Realty Company, 304 F. Supp. 1236 (N.D. Ga. 1969) 21

Buchanan v. Warley, 245 U.S. 60 (1917) 13

Chicago Real Estate Board v. City of Chicago, 36 Ill.2d 530, 224 N.E.2d 793 (Sup. Ct. 1967) 34

Crow v. Brown, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd per curiam 457 F.2d 788 (5 Cir. 1972) 17

DeKalb Real Estate Board v. Chairman and Board of Commissioners of Roads and Revenue for DeKalb County, 378 F. Supp. 748 (N.D. Ga. 1973) 27

Elfbrandt v. Russell, 384 U.S. 11 (1966) 30

Garrett v. City of Hamtramck, 357 F. Supp. 925 (E.D. Mich. 1973) 14

Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963) 30

Harmon v. Tyler, 273 U.S. 668 (1927) 13

Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969) 14

Jones v. Alfred H. Mayer Co, 392 U.S. 409 (1968) 15

Kovacs v. Cooper, 336 U.S. 77 (1949) 31

TABLE OF CONTENTS

CASES CITED:

Lehman v. City of Shaker Heights,
418 U.S. 298 (1974) 30

Levitt and Sons, Inc. v. Division Against Discrimination in the State Department of Education,
31 N.J. 514, 158 A.2d 177 (1960), appeal dismissed,
363 U.S. 418 (1960) 2, 12

McLaurin v. Oklahoma State Regents for Higher Education,
339 U.S. 637 (1950) 15

Milliken v. Bradley,
418 U.S. 717 (1974) 17

National Association for the Advancement of Colored People v. Button,
371 U.S. 415 (1963) 30

Near v. Minnesota,
283 U.S. 697 (1939) 30

Norwalk CORE v. Norwalk Redevelopment Agency,
395 F.2d 920 (2 Cir. 1968) 14

Otero v. New York City Housing Authority,
484 F.2d 1122 (2 Cir. 1973) 20

Packer Corporation v. Utah,
285 U.S. 105 (1932) 31

Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations,
413 U.S. 376 (1973) 30, 34

Schenck v. United States,
249 U.S. 47 (1919) 29

TABLE OF CONTENTS

CASES CITED:

Shannon v. United States Department of Housing and Urban Development,
436 F.2d 809 (3 Cir. 1970) 13

Shelley v. Kraemer,
334 U.S. 1 (1948) 13

Summer v. Township of Teaneck,
53 N.J. 548, 251 A.2d 761 (1969) 29

Sweatt v. Painter,
339 U.S. 629 (1950) 15

Trafficante v. Metropolitan Insurance Co.,
409 U.S. 205 (1972) 14, 17

United States v. Bob Lawrence Realty, Inc.,
474 F.2d 115 (5 Cir. 1973), cert. denied, 414 U.S. 826 (1973), rehearing denied, 414 U.S. 1087 (1973) 12, 34

United States v. Bob Lawrence Realty, Inc.,
313 F. Supp. 870 (N.D. Ga. 1970) 34-35

United States v. Hunter,
459 F.2d 205 (4 Cir. 1972), cert. denied,
409 U.S. 934 (1972), rehearing denied,
413 U.S. 923 (1973) 12

United States v. Mintzes,
304 F. Supp. 1305 (D. Md. 1969) 35

Valentine v. Chrestensen,
316 U.S. 52 (1942) 30

Village of Belle Terre v. Boraas,
416 U.S. 1 (1974) 31

CASES CITED:

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 728 (1976) 28

Young v. American Mini Theatres, Inc., – U.S. –, 49 L.Ed.2d 310 (1976) 31, 34

STATUTES CITED:

42 U.S.C. §3604 ..... 2, 12, 34

42 U.S.C. §3610 14

N.J.S.A. 10:5-1 et seq. 12, 34

N.J.S.A. 10:5-10 3

N.J.S.A. 10:5-12(k) 34

UNITED STATES CONSTITUTIONAL PROVISIONS:

Amendment I ..... passim

Amendment XIV ..... passim

OTHER AUTHORITIES CITED:

Bradburn, Sudman and Gockel, Side By Side—Integrated Neighborhoods in America (1971) .. 19

Conser, Human Rights and the Realtor (1963) 19

Cosseboom, Grosse Pointe, Michigan—Race Against Race (1972) 19

Glazer, Affirmative Discrimination—Ethnic Inequality and Public Policy (1975) 18, 19

OTHER AUTHORITIES CITED:

Grodzins, The Metropolitan Area as a Racial Problem (1958) 20

Johnson, Call Me Neighbor, Call Me Friend: The Case History of the Integration of a Neighborhood on Chicago's South Side (1965) 13

Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (1944) 13, 18

Report of the United States Commission on Civil Rights, Equal Oportunity in Suburbia (1974) .. 18

Schelling, A Process of Residential Segregation: Neighborhood Tipping, Racial Discrimination in Economic Life (1972) 21

Taeuber and Taeuber, Negroes in Cities (1965) 19

Wolf, "The Tipping Point in Racially Changing Neighborhoods," 29 American Institute of Planning Journal 217 21

QUESTIONS PRESENTED

1. Is Willingboro Township's ordinance, adopted to restrain an existing fear psychology which was threatening to destroy its integrated residential housing, and affecting only present but not prospective community residents, permissible under the equal protection clause of the Fourteenth Amendment?

2. Is Willingboro's ordinance prohibiting residential "for sale" signs a permissible restriction on commercial speech, where the restriction furthers a superior governmental interest and is the minimum limitation necessary to accomplish that purpose?

STATEMENT OF THE CASE

A. *Historically Willingboro's housing pattern has been fully integrated.*

Willingboro Township is a community of approximately 45,000 residents located in Burlington County, New Jersey (U.S.C.A. Joint Appendix 128a).[1] Its significant residential development commenced in the late 1950's and is attributable mainly to Levitt and Sons, Inc. (Jt. App. 182a). At the outset Levitt refused to sell its homes to minority group members. But, before the Township had a chance to develop along segregated lines, this racially-based practice was enjoined by the New Jersey Supreme Court. *Levitt and Sons, Inc. v. Division Against Discrimination in the State Department of Education*, 31 N.J. 514, 158 A.2d 177 (1960), *appeal dismissed*, 363 U.S. 418 (1960). Immediately thereafter, Levitt instituted a policy of actively encouraging the development of the Township as an integrated community (Jt. App. 182a).

As a result, Willingboro now has a totally integrated housing pattern. None of the ten different areas or "parks" (*i.e.*, Millbrook Park, Buckingham Park, Garfield Park, etc.) constituting Willingboro can be denominated a "white section", a "black section" or a "Spanish-speaking section"; each park contains a diversity of almost all racial and ethnic groups living together (Jt. App. 183a; 214a; 246-7a). As indicated in the decision below, "a close approach was achieved to that housing ideal sought by fair-minded citiezns, mandated by the federal Fair Housing Act, 42 U.S.C. §3604, and impelled by our Constitution." 535 F.2d at 789.

1 Hereinafter, for purposes of brevity, references to the Joint Appendix utilized in the Court of Appeals will merely be cited as "Jt. App."

B. *Whenever racial conflict emerged, Township Council acted positively to minimize and, hopefully, eliminate any discord.*

In the late 1960's racial problems and conflict surfaced in Willingboro. Township Council, the governing body of Willingboro Township, responded in several ways. One action taken was the creation of the Willingboro Human Relations Commission (Jt. App. 183a; 231a). That body is statutorily charged with attempting "to foster through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the inhabitants of the community" and was empowered by Township Council "to make recommendations to [Township Council] for the development of policies and procedures in general and for programs of formal and informal education that will aid in eliminating all types of discrimination based on race, creed, color, national origin, ancestry, age, marital status or sex." *N.J.S.A.* 10:5-10.

The Township also became a member of National Neighbors, an organization promoting integrated housing and discussing ways to overcome problems inherent with this action (Jt. App. 183a).

Despite these actions, not all of the racial problems in Willingboro were solved. Specifically, complex psychological problems due to the mobility of Willingboro's suburban residential population persisted.

C. *To combat a developing fear psychology, Township Council prohibited "for sale" signs.*

The Fort Dix Military Reservation and McGuire Air Force Base are both located close to Willingboro and many of Willingboro's residents are either stationed at or are civilian employees at these installations. This fact

alone imposes a certain transient nature on the community. However, when to this are added the usual reasons for residents being required to relocate (job transfer, change in family size or personal financial circumstances), the intense competition by over eighty realtors' offices for the sale of homes in Willingboro, and the uniformity and proximity of residential construction, the proliferation of "for sale" signs and the documented reluctance of realtors to remove "sold" signs after they were up for five days, contrary to the prior ordinance, helped to create the impression that many people were leaving the community (Jt. App. 233a). As a result, a fear psychology developed among many home owners. A former chairperson of the Human Relations Commission, Valerie Gladfelter indicated that:

> "People expressed concern on seeing large numbers of for sale signs that neighborhoods would undergo rapid racial change, and this was a cause of worry to them" (Jt. App. 233a).

Councilman William Kearns described the fear psychology in another way:

> ". . . [P]eople in the community were expressing a desire to sell their homes and move to other areas of Burlington County because what they sensed was a lack of stability or a large turnover in the community, and that this large turnover was resulting in a substantial influx of minority groups into the community beyond what could be sustained without the community itself turning into a ghetto within the county.
>
> "People would indicate that: 'Everybody on my street is moving. I've got to get out of this town before it's too late.'
>
> "People would express a concern of: 'With all the turnover, my property value is going to go down. I got to get out'" (Jt. App. 181a).

Councilman Steven Heath related that:

> "You know, when you are a property owner, whether the sales are going or not, you have a general opinion. You drive around. People would see a lot of signs. They would say: 'Everybody wants to sell. This must be because there are too many blacks in town; and if we don't do something about it, boy it's just going to go, and let's sell and get out now'" (Jt. App. 207a).

While Township Council accorded no rationality to this prevailing attitude, it was faced with a psychological problem to which it believed it must respond (Jt. App. 181a). The Human Relations Commission, after an investigation noting the increasing panic selling resulting from the fear psychology, recommended to Township Council that "for sale" signs be prohibited in residential areas of the Towwnship. Alexander Porter, one of the members of the Human Relations Commission, described the reasoning behind the recommendation:

> "I think the Commision would like to see a community which is as harmonious as it would choose to be without the kind of pressures, if I may use that term, which would induce people to sell when in fact they don't want to sell; and I think that's the thing that the ordinance was directed at.
>
> "Individuals were responding and reacting to a rash of signs, or one sign which would lead to another, and another and another.
>
> "I think that's the concern the Commission was trying to address.
>
> "If the neighborhood was or is to be all black, and if that is a decision by choice, of the individuals involved, then the Commission I believe would have no concern about that. But if neighbors, residents of the township are being pushed into this kind of

> thing by the presence of a sign or signs, then I think the Commission's concern would be that that not ought to be, this is not the free choice that people ought to exercise, should exercise" (Jt. App. 244a-245a).

Township Council investigated how similar ordinances had worked in other municipalities (Jt. App. 120a-121a; 184a-185a). It held two public hearings, one before and one after the drafting of the ordinance under review (Jt. App. 186a). The ordinance prohibiting "for sale signs was adopted on March 18, 1974.

D. ***Several reasons were expressed by Township Council for approving the ordinance, including a desire to maintain an integrated housing pattern in the community.***

While several reasons for the enactment of the ordinance appear in the record, two of them predominate: (1) to minimize the fear psychology which had developed in the residents of the Township because of the proliferation of "for sale" signs; and (2) to maintain an integrated housing pattern in the community (Jt. App. 181a; 182a; 191a; 200a-201a; 207a; 210a; 218a). Other less significant reasons given are the difficulty in administrative enforcement of the previous ordinance requiring removal of a "sold" sign after five days, and aesthetic considerations (Jt. App. 188a; 200a; 209a; 209a-210a).

There was no testimony to the effect that a motive was to restrict the number of minority residents residing in Willingboro. Indeed, the evidence was to the contrary. Councilman Kearns testified that:

> "Q In your discussion in council, was it ever your feeling that council was utilizing this ordinance to restrict minority groups from moving into town?
>
> "A Absolutely not.
>
> "Q Blacks, Spanish persons, what-have-you?
>
> "A Absolutely not. We were trying to prevent the emotional reaction on the part of sellers. It was in no way related to people moving into the community" (Jt. App. 185a).

Similarly, Councilman Heath commented that he had "no preconceived notion as to what the percentages of people ought to be." (Jt. App. 214a).

The Chairman of the Human Relations Commission, the Reverend Ernest Lyght, testified that "balance" could not be equated with a ratio and had no numerical connotation; rather it was "[s]imply the openness and ability to live in the community and anywhere in the community one chooses." (Jt. App. 249a).

E. ***After adoption of the ordinance, the fear psychology subsided although as many homes were being sold after as before the ordinance was adopted.***

Two real estate brokers testified on the number of homes being sold in Willingboro before and after the adoption of the ordinance under review. One indicated that there was no significant change (Jt. App. 163a) while the other believed there was an increase in sales (Jt. App. 222a). There was no testimony indicating a diminution in sales. Yet everyone agreed that the ordinance had resulted in a decrease in the previously existing fear psychology (Jt. App. 163a; 191a-192a; 208a; 222a-223a; 234a; 241a-242a; 248a-249a; 250a).

F. *The District Court concluded that the ordinance was unconstitutional while the Court of Appeals disagreed.*

Suit was commenced by a realtor and by a corporation owning a home in Willingboro.[2] (Jt. App. 1a). After a two day trial, the District Court for the District of New Jersey concluded that the ordinance was unconstitutional, holding that (1) "the ordinance brings about a serious denial of a property owners [sic] right to freely and reasonably express to others the desire to sell in violation of the First Amendment" and (2) "in its application the Willingboro ordinance results in an infringement upon the fundamental right to travel."

On appeal, the United States Court of Appeals for the Third Circuit, in a two to one decision, reversed the District Court decision and upheld the constitutionality of the ordinance. That Court concluded that while commercial speech was entitled to First Amendment protection, in assessing and balancing the interests involved, "[t]he preservation of a desirable community impels a priority of the community's needs over commercial transactions in the community as they see fit, so long as those community needs are reasonably established and the means chosen to meet them do not infringe upon the fundamental constitutional rights of individual businessmen." It then determined that "the limited denial occasioned by the ordinance herein [resulted] from a reasonable exercise of the police power in furthering the public welfare by forestalling panic selling and its offspring, segregation." Finally, the Court found that "[s]ellers are free to sell to any economically qualified buyer. Economically qualified buyers of

2. A review of the deeds on file in the office of the Burlington County Clerk discloses that the subject property was subsequently sold on April 21, 1976.

any racial group are free to buy any home in any section of Willingboro. No burden on commerce or a deterring influence on the individual right to migrate has been shown."

SUMMARY OF ARGUMENT

Willingboro Township is a community which exemplifies the proposition that people of differing racial, religious and ethnic backgrounds can live together. When it became apparent that there was a growing fear psychology threatening a change from an open, integrated community to a resegregated one, and that the proliferation of "for sale" signs was the direct cause of this fear psychology, Township Council adopted an ordinance prohibiting "for sale" signs.

I.

Society has a significant interest in maintaining an integrated community such as Willingboro. When "minority enclaves" develop, serious consequences ensue, ranging from ghettoization, with its resultant tensions and violence, to a diminution of economic opportunity, to added costs to society generally to overcome the handicaps associated with a separation of minorities. That interest is so important that reasonable action taken to prevent the resegregation of a community must be upheld.

II.

The problem of racial residential succession, accelerated by a fear psychology, was identified by Township Council. The proliferation of "for sale" signs was diagnosed as the cause of the problem. Township Council was very concerned because Willingboro had achieved and highly valued its full residential integration. Its action in adopting the ordinance was an attempt to maintain these values.

III.

The ordinance adopted by Township Council did not attempt to establish a quota on the number of minority

group members who may reside in Willingboro. Its impact was not on prospective residents, since the absence of "for sale" signs did not preclude the purchase of homes, other avenues to obtain this information being readily available. Nor can it be cogently asserted that the prohibition of "for sale" signs was aimed at prospective minority group residents, since the absence of "for sale" signs pertained to all prospective residents. The impact of the ban of "for sale" signs was solely on present residents of the community and only affected them to the extent that it would remove an emotional cause for wanting to leave Willingboro.

IV.

The ordinance resulted in a significant reduction in the fear psychology and eliminated an artificial challenge to the maintenance of an integrated community.

V.

Commercial speech, while entitled to First Amendment protection, may be restricted when it conflicts with a paramount governmental interest. Where commercial speech, because of the way the public generally perceives it, results in a situation antithetical to a paramount governmental interest, it can be proscribed. So long as the governmental limitation is the minimum interference reasonably necessary to protect the affected public interest, there is no violation of the First Amendment. The content of the particular commercial speech is a factor in determining the extent of its protection.

ARGUMENT

I. Willingboro Township Council acted properly in prohibiting "for sale" signs.

A. *The provision and maintenance of open housing is a national goal.*

It is apparent that the provision and maintenance of open[3] housing is a national goal. Many statutes have been adopted to ensure progress toward this end. 42 U.S.C. §3604 makes unlawful certain activity which would inhibit openness in housing "because of race, color, religion, sex, or national origin." Similar provision is available in New Jersey under *N.J.S.A.* 10:5-1 *et seq.*, the Law Against Discrimination.[4] The civil rights granted by these enactments have been diligently enforced in both Federal and New Jersey judicial forums. For example, see *United States v. Hunter*, 459 F.2d 205 (4 Cir. 1972), *cert. denied*, 409 U.S. 934 (1972), *rehearing denied*, 413 U.S. 923 (1973); *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5 Cir. 1973), *cert. denied*, 414 U.S. 826 (1973), *rehearing denied*, 414 U.S. 1087 (1973); *Levitt and Sons, Inc. v. Division Against Discrimination in the State Department of Education, supra.*

While the goal of open housing must place primary reliance on the United States Constitution, the objective as implemented does not date back to the ratification of the Constitution or even to the mid-Nineteenth Century and the adoption of the Fourteenth Amendment. Rather,

3. The term "openness" was used by the chairman of the Human Relations Commission, the Reverend Ernest Shaw Lyght, as being "the ability to live in the community and anywhere in the community one chooses" (Jt. App. 249a). This definition of "openness" shall be the one utilized in this Brief.

4. It should be noted that on the second page of the real estate listing agreements, Exhibits P-4 and P-5, is reproduced a Memorandum from the Attorney General of New Jersey explaining a property owner's responsibilities under the Law Against Discrimination (Jt. App. 125a; 127a).

its expression is one of the Twentieth Century, as our governmental institutions have responded to the needs of the people. In *Buchanan v. Warley*, 245 U.S. 60 (1917), this Court concluded that an ordinance of the City of Louisville, Kentucky, had as its purpose the compulsory separation of races. The ordinance was held to be unconstitutional under the Fourteenth Amendment. Ten years later, in *Harmon v. Tyler*, 273 U.S. 668 (1927), an ordinance forbidding a black from establishing a home in a white community or a white from establishing a home in a black community without the written consent of those residing in the particular areas was declared to be invalid. Twenty-one years passed until *Shelley v. Kraemer*, 334 U.S. 1 (1948), where it was held that a restrictive covenant which excluded "people of the Negro or Mongolian Race" from the occupancy of real estate for residential purposes could not be enforced in a state court, since it would be violative of the Fourteenth Amendment.

From this somewhat sparse, although consistent, background of judicial decisions, in conjunction with Congressional enactments, developed the national policy of open housing. However, there was an added ingredient. While before World War II, the policy was proscriptive in character, merely declaring what could not be done, after that event, the policy became more positive, developing into a concept of what should be done.[5] This has led to a multitude of judicial decisions, each serving to further articulate this dynamic policy of openness in housing and its handmaiden, integration. These cases range from *Shannon v. United States Department of Housing and Urban Development*, 436 F.2d 809 (3 Cir. 1970), requiring an urban

5. Changes in our national policies toward minorities have, according to some, a direct relationship with wars involving this country. See Johnson, *Call Me Neighbor, Call Me Friend: The Case History of the Integration of a Neighborhood on Chicago's South Side* (1965), 46; and Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (1944).

renewal plan to consider the effect of the change in the type of housing to be made available by the plan on the racial composition of the renewal area; to *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2 Cir. 1968), holding that a cause of action is alleged where individuals are displaced by an urban renewal project which did not plan for the relocation of blacks and Spanish-speaking displacees to the same extent that it did for whites; to *Garrett v. City of Hamtramck*, 357 F. Supp. 925 (E.D. Mich. 1973), determining that a city implementing an urban renewal project intentionally designed to have a greater effect on black residents would be responsible for securing proper housing for the displacees; to *Hicks v. Weaver*, 302 F. Supp. 619 (E.D. La. 1969), holding that low-cost housing should not be constructed at certain sites, the effect of which would be to perpetuate segregation in public housing. Each of these decisions illustrate the change to a positive approach in our national housing policy.

This policy was recognized by this Court in *Trafficante v. Metropolitan Insurance Co.*, 409 U.S. 205 (1972). In *Trafficante*, two tenants—one white and one black—at an apartment complex filed suit against the owner alleging a discrimination against nonwhites on the basis of race in the rental of apartments within the complex in violation of 42 U.S.C. §3610. They alleged injury based upon the loss of the social benefits of living in an integrated community, the deprivation of business and professional advantages which would have accrued had they lived in an integrated community and the suffering of embarrassment and economic damage from being stigmatized as residents of a white ghetto. In recognizing a cause of action had been alleged, this Court observed that "the alleged injury to existing tenants by exclusion of minority persons from

the apartment complex is the loss of important benefits from interracial association." 409 U.S. at 209-210. See also *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), which held that 42 U.S.C. §1982 bars all racial discrimination, private as well as public, in the sale or rental of property.[6]

This Court's statement in *Jones*, in commenting upon the pledge of the Thirteenth Amendment, bears reiteration. Observing that "when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery," this Court went on to say:

> "Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom—freedom to 'go and come at pleasure' and to 'buy and sell when they please'—would be left with 'a mere paper guarantee' if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a ppromise the Nation cannot keep." 392 U.S. at 443.

---

6. This Court's recognition of the positive nature of our national policy toward securing equal opportunity for minorities has, of course, not been solely confined to the area of open housing. For example, in the field of higher education, *Sweatt v. Painter*, 339 U.S. 629 (1950), held that a segregated law school for black students could not provide blacks with equal educational opportunities; and *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950), concluded similarly with respect to special racial regulations at a graduate school. It is interesting to note that this Court recognized specifically that the "restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." 339 U.S. at 641.

Accordingly, it is evident that open housing is not only a national goal but, indeed, a national priority.

B. *Preservation of integration is consistent with open housing.*

Petitioners have asserted that Willingboro, by regulating in order to maintain integration in the community, is acting contrary to the goal of open housing, which assumes unregulated freedom of choice. However, even a cursory analysis of this argument exposes its fallacy.

As noted, open housing may be defined as "the ability to live in the community and anywhere in the community one chooses" (Jt. App. 249a), subject only to financial considerations. Integration in housing, or the residing together of members of different racial, ethnic and religious groups in a community, does not interfere with the ability to purchase a home of one's choice. Prospective purchasers are not restricted from buying a home because a community is integrated, so long as no numerical quotas are established. Current residents are not precluded from living in a community because it has open housing. Living in an integrated community has an impact upon its residents, but it bars no prospective purchaser from living there.

Similarly, the assertion that the preservation of integration requires the use of numerical quotas is erroneous as well as being contrary to the record. Maintaining integration in an already integrated community is not dependent upon the numbers of a group represented. And the testimony at trial clearly indicated that this was not Township Council's intent or desire. Council only wanted to forestall a breakdown of Willingboro's integration based upon an emotional pressure, not rational consideration. This does not require the establishment of quotas.

C. *Segregated housing has practical ramifications which cannot be tolerated.*

Segregated, as opposed to integrated, housing does violence to everyone, whites, blacks and other minority group members alike. This was recognized by Congress and, through it, by this Court in *Trafficante, supra.* Segregated housing not only harms society because it precludes people from obtaining the benefits of a full interaction between various groups, but it also leads to other problems. For instance, in *Crow v. Brown,* 332 F. Supp. 382 (N.D. Ga. 1971), *aff'd per curiam,* 457 F.2d 788 (5 Cir. 1972), in commenting upon the policies of governmental officials which furthered the concentration of public housing for low income blacks in the City of Atlanta and prevented construction of such housing beyond the City limits, the Court specified some of the effects of a continuation of these policies:

> "One of the consequences of this racial concentration is that it has become virtually impossible to achieve meaningful school desegregation. Indeed, as even a glimmering of objectivity will disclose, a dispersal of urban housing patterns is the only alternative to massive bussing if desegregation, rather than resegregation, is to be achieved. [Citation omitted]. A second consequence has been a swelling of the unemployment rolls in the City since job opportunities have become more scarce each year, although they have increased in the suburbs" 332 F. Sup. at 391.

The Court in *Crow* went on to take note of the report of the National Commission on Urban Problems, which indicated the possibility of increased tension and violence resulting in greater polarization of blacks and whites. See also *Milliken v. Bradley,* 418 U.S. 717 (1974).

However, segregated housing is not exclusively an urban problem. In the Report of the United States Com-

mission on Civil Rights, *Equal Opportunity in Suburbia* (1974), it was observed, at page 4, that, "[t]he decade of the sixties was one of increasing suburbanization of whites in metropolitan areas and of increasing concentration of blacks within central cities—in short, of increasing racial separation." Willingboro exists in marked contrast to this trend.

On the other hand, in Glazer, *Affirmative Discrimination—Ethnic Inequality and Public Policy* (1975), the author reflects upon the benefits accompanying integrated housing. Among these are an equalization of education achievement, better social relations and whatever follows from it, better housing for minorities and a more rapid improvement of the economic position of blacks.

D. *Experience has shown that human fears often turn integrated communities into resegregated ones.*

In *An American Dilemma: The Negro Problem and Modern Democracy* (1944), Gunnar Myrdal defined the "self-fulfilling prophecy:"

> "When a few Negro families do come into a white neighborhood, some more white families move away. Other Negroes hasten to take their places, because the existing Negro neighborhods are overcrowded due to segregation. This constant movement of Negros into white neighborhods makes the bulk of the white residents feel that their neighborhood is doomed to be predominantly Negro, and they move out—with their attitudes against the Negro reinforced. Yet if there were no segregation, this wholesale invasion would not have occurred. But because it does occur, segregational attitudes are increased, and the vigilant pressure to stall the Negroes at the borderline is kept up." Vol. I, at 623.

Examples of this process are endemic in recent literature. Some of the reasons have been related in Conser, *Human Rights and the Realtor* (1963), at page 9:

> "The white resident resists Negro encroachment and eventually moves because: (1) he believes his white neighbors will move sooner or later; (2) he believes that if he remains too long he will not be able to find a white buyer; (3) he believes that; under the circumstances, property values will drop; (4) he believes that if he remains his own social position will be adversely affected; (5) he prefers that his children's close associates and friends be of the same racial and similar religious background; (6) he is concerned about intermarriage and the added problems that it bring; (7) if he can readily move, he choses that way out as being preferable. The real estate broker who is charged with seeking a buyer soon finds that he cannot interest white families except as the property can be had at a bargain price or terms. Therefore, the seller easily concludes that his best interests are served by arranging a sale to a Negro family. And so that process of replacement starts—and with each sale continues inexorably until the last white family moves."

In Cosseboom, *Grosse Pointe, Michigan—Race Against Race* (1972), the fear reactions of whites to blacks moving into a previously all-white neighborhood are dramatically documented. In Bradburn, Sudman and Gockel, *Side By Side—Integrated Neighborhoods in America* (1971), a sociological study of integrated communities, many reactions of tension and panic are presented (commencing at page 64). Taeuber and Taeuber, *Negroes in Cities* (1965), reviews the pattern of racial residential succession (commencing at page 99). As noted in Glazer, *Affirmative Discrimination—Ethnic Inequality and Public Policy, supra,* at page 136: "Clearly, the separation into two

nations is proceeding apace." To paraphrase a familiar expression, fearful whites, like Arabs, have been folding their tents and silently stealing away.

E. *Willingboro was showing the symptoms of the initial stage of resegregation and effectively acted to retard this movement.*

It would be naive at best (and it could probably be more accurately classified as dangerous) for anyone to fail to recognize the existence of certain human frailties. In the context of this case, the human frailty is fear, fear of living in a community which is changing from integrated to segregated. That fear becomes more real, more apparent, more conscious as the "tipping point" comes closer. The tipping factor has been commented upon by many, including the judiciary. *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1124 (2 Cir. 1973), recognized the existence of a racial "tipping factor" causing white residents to take flight and leading eventually to non-white ghettoization of the community. Grodzins, *The Metropolitan Area as a Racial Problem* (1958), comments, at page 6, upon this phenomenon:

> "The process by which whites of the central cities leave areas of Negro in-migration can be understood as one in the social-psychology of 'tipping a neighborhood.' The variations are numerous, but the theme is universal. Some white residents will not accept Negroes as neighbors under any conditions. But others, sometimes willingly as a badge of liberality, sometimes with trepidation, will not move if a relatively small number of Negroes move into the same neighborhood, the same block, or the same apartment building. Once the proportion of non-whites exceeds the limits of the neighborhood's tolerance for interracial living (this is the 'tip point'), the whites move out."

See also Schelling, *A Process of Residential Segregation: Neighborhood Tipping, Racial Discrimination in Economic Life* (1972) and Wolf, "The Tipping Point in Racially Changing Neighborhoods," 29 *American Institute of Planning Journal* 217.

One of the factors which makes a tipping point so significant is the existence of a fear which gives rise to it and which results in panic selling. And the role of "for sale" signs as a catalyst of that fear has itself been recognized. See *Browns v. State Realty Company*, 304 F. Supp. 1236 (N.D. Ga. 1969) and *Barrick Realty, Incorporated v. City of Gary, Indiana*, 491 F.2d 161 (7 Cir. 1974). That factor and that catalyst existed in Willingboro.

Willingboro's stance toward open housing and integration was documented at the trial of this case. In Willingboro, white, black, Spanish-speaking and other minority residents live on the same street, on the same block. Willingboro, unlike so many other communities which profess to be integrated, does not restrict its minority residents to an enclave. This community-wide racial interspersion in housing has characterized Willingboro since the early 1960's. However, a fear psychology began to develop, based on the proliferation of "for sale" signs.

The brief of Petitioners asserts that there was no causal relationship between the "for sale" signs and the fear psychology (Petitioners' Brief-21). Petitioners do not refer to the record to substantiate this contention; rather, they attempt to reason that since a resident can be informed of the fact that a neighboring homeowner is selling his home, in other ways, whether through word of mouth, advertisements in newspapers and other media, seeing a moving van in front of the home or being aware of a new neighbor, "for sale" signs alone cannot cause the

fear psychology. Yet this analysis is contradicted by the proofs before the courts. In reality, the "for sale" signs and "sold" signs, maintained long after the five-day limitation established by the prior ordinance were the visible, daily reminders that neighbors were moving which launched and enforced the fear psychology. Township Council recognized this and acted to eliminate the fear psychology.

On the other hand, *amici* A.C.L.U. do not even admit the existence of the fear psychology (A.C.L.U. Brief 23). At best, *amici* concede that there was a "concern" on the part of Township Council that "for sale" signs would create a fear psychology. This contention, likewise, grossly understates the evidence at trial. The almost hysterical attitude of many of Willingboro's residents is amply documented in the record, specific portions of which are repeated in Section C of this Brief's Statement of the Case. Township Council was not conjecturing about the existence of a fear psychology. Township Council was advised by the Human Relations Commission that a fear psychology existed; Township Council members individually, through general discussions with members of the public, ascertained that a fear psychology existed; Township Council collectively held two public hearings at which its belief that a fear psychology existed was substantiated.

It became apparent that the result of the fear psychology would lead Willingboro away from being an integrated community to becoming a resegregated one. See Exhibit D-1 (Jt. App. 128a) showing the actual change in racial composition of the community. Township Council, after receiving a report from the Human Relations Commission, and after holding two public hearings on what should have been done, determined that the fear psychology was significant enough to warrant the adoption of the ordinance prohibiting "for sale" signs. And, clearly, the

desired objective was achieved: the fear psychology subsided. (Jt. App. 163a; 191a-192a; 208a; 222a-223a; 234a; 241a-242a; 248a-249a; 250a).

Councilman Kearns indicated that:

> "Prior to the ordinance, I've already indicated that I think the concern of the community and the reaction of the people are having, and I can—I know of particular cases that I've dealt with as an attorney, that people have indicated they are going to get out before it's too late, or they've seen a number of signs on their particular street.
>
> "I've had people come up and say: 'My God, there is three houses for sale on my street. What's happening? What's going on? I got to get out of here.'
>
> "We used to get that kind of reaction, and there has been a very noticeable elimination of that. And I think there are still some people who may indicate that they are moving because of concern for minority problems within the community. But it's dropped off to the point that in 1974, I don't think I could think of more than two or three people that I personally have dealt with that are moving for that reason. Most of the people that seem to be selling now are selling for business transfer reasons or because their families have grown and moved out and they want to get into a different type of house, or their families are growing and they need a larger home than they could get, or they've gotten interested in—Well, one family is interested in having a horse, which is rather difficult on our size of lots" (Jt. App. 191a-192a).

The former chairperson of the Human Relations Commission Gladfelter testified:

> "The feedback that I had gotten has been that people in the community like it better without the signs, that they feel less pressure on the community and they seem to make some connections between that and

> at least reported—less frequently reported kind of racial disturbance in the community" (Jt. App. 234a).

The Chairperson of the Human Relations Commission, Reverend Lyght, commented:

> "I think my specific response would have to be that it's fairly clear to me that the prohibition has stopped or brought to an end the kind of things that we used to hear of, people talking about the rapid change in the community, whether it was in fact or assumed.
>
> "They would, from time to time, have people raising questions with us, residents of the community in terms of the openness of the community, and using the signs as their way of saying that something is wrong. We're not getting this type of thing now" (Jt. Rpp. 250a).

Petitioners have asserted in their Brief that the intent of the ordinance was to further the "exclusion of racial minorities from the Township (Petitioner's Brief-9; 33). This allegation not only is unsupported by but contradicts the record. Further, this allegation attributes an improper objective to a local legislative body which has a demonstrated history of working to achieve a better, more open, integrated racial environment in Willingboro. Councilman Kearns testified that the ordinance "was in no way related to people moving into the community" (Jt. App. 185a). Councilman Heath, a member of the Executive Committee of the Burlington County Branch of the N.A.A.C.P., a member of the Kinsmen (a predominantly black fraternal organization), and a member of and legal counsel to the Spanish-American Club of Burlington County (Jt. App. 204a), not only stated that he had "no preconceived notion as to what the percentages of people ought to be" (Jt. App. 214a), but indicated that the

N.A.A.C.P. was among the strongest proponents of the ordinance (Jt. App. 209a).

Clearly, this is not a case of Township Council trying to keep anyone out of Willingboro, a town which has been proud of the fact that it is a community where all are welcome and live together. Township Council did not attempt to preclude all advertisement of the availability of homes for purchase, since, clearly, these other methods did not produce the "uptightness" or fear psychology resulting from the abundance of "for sale" and "sold" signs. It is ironic in this respect that in a Motion for Summary Judgment made by Petitioners before the trial of this matter, which Motion was denied, the argument was advanced that since the ordinance still permitted "for sale" signs on newly-constructed homes, there was a denial of equal protection to Petitioners, neither of whom owned a newly-constructed home. This assertion was abandoned before trial when it became evident that the continuation of the ordinance authorization to maintain "for sale" signs on such homes was indicative of Township Council's intent not to prohibit individuals from buying homes in Willingboro. In fact, this obviously strengthened Township Council's contention that the ordinance was only enacted to affect present residents of the community and only to the extent that it would remove the constant prod festering the fear psychology represented by the "for sale" and "sold" signs.

The proofs at trial showed that there was no frustration of the ability of prospective purchasers to buy homes in Willingboro. The uncontradicted testimony was to the effect that as many homes were being sold after the adoption of the ordinance as before, the only change being that residents were now selling their homes for reasons of job transfer, need for a different size home because of change in family size, etc., not because they were fearful that the

community was "changing" into an all-black enclave. In *Barrick Realty, Incorporated v. City of Gary, Indiana*, supra, 491 F.2d at 164, the Court commented:

> "Unquestionably, the municipal interests which justify the restriction of commercial activity in residental neghborhoods support a prohibition against the display of commercial signs. See *Euclid v. Ambler Co.*, 272 US. 365, 387-397. The City's interest in attempting to encourage and maintain stable integrated neighborhoods provides important added support. Since the record does not indicate that the ordinance has frustrated the ability of prospective buyers to find the homes in Gary which are for sale, and since alternative means of communication are available to the plaintiffs, the regulation is permissible."

The same policy considerations are applicable as well to Willingboro.

The fact that the ordinance was not aimed at maintaining any particular racial "quota" is strengthened by the recognition that in reality the prohibition of "for sale" signs did not result in keeping any prospective minority group residents out of Willingboro. Attached to this Brief as Exhibit "A" is a copy of the most recent school population survey results in Willingboro required to be compiled under New Jersey administrative law. While Township Council does not contend that there is any direct, absolute ratio between the number of minority families living in Willingboro and the number of children of school age that they may have, the attachment does show a continued increase in the number of black youngsters attending Willingboro's public schools since the adoption of the ordinance. If the object was to keep blacks and other minorities out of Willingboro, it has not succeeded; nor was it Township Council's intention to so exclude anyone.

Willingboro, as phrased by Councilman Heath, is a "great experiment," an experiment in people of all backgrounds, races and religions living together amicably. What Township Council intended was to permit the experiment to continue, if it could, by removing an artificial "germ" ("for sale" signs) afflicting the community's health and eliminating its symptom (the fear psychology). Willingboro wanted to permit its residents to remain, not in order to maintain a numerical balance or ratio of whites and non-whites, but to prevent the "great experiment" from foundering because of an artificially imposed pressure. Petitioners quote part of the opinion of the District Court, which speculated that the ordinance would have the "ultimate effect of freezing in past discrimination, denying blacks a fair opportunity to find suitable housing," citing *DeKalb Real Estate Board v. Chairman and Board of Commissioners of Roads and Revenue for DeKalb County*, 378 F. Supp. 748 (N.D. Ga. 1973) (Petitioners' Brief-34). It should be quite apparent that Willingboro never had any great past discrimination to freeze in.

Willingboro does not wish to become another Camelot, "a fleeting wisp of glory"; Willingboro does not want to become just another dead monument to the cause of brotherhood and better race relations; it wants to be a living example that all people can live together.

II. An ordinance prohibiting "for sale" signs in an effort to combat a fear psychology leading to the resegregation of a community does not violate the first and fourteenth amendments.

Although Petitioners sought certiorari by asserting that Willingboro's ordinance conflicted "with the principles established by the decision of this Court in *Bigelow v.*

Virginia, 421 U.S. 809 (1975)" (Petition for Writ of Certiorari-6), apparently Petitioners have now concluded, in agreement with Willingboro, that *Bigelow* does not render the ordinance unconstitutional. Petitioners have, accordingly, shifted their approach, relying principally upon *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). A review of this and other cases cited by Petitioners will show support for, not disputation of, Willingboro's ordinance.

A. *Willingboros' ordinance advances a significant governmental interest—the halting of resegregation.*

It is clear that *Virginia State Board of Pharmacy* held that commercial speech is not *wholly* outside the protection of the First Amendment (425 U.S. at 762); it is also evident that protected commercial speech may in certain instances be restricted, consistent with the First Amendment. These permissible limitations include "time, place and manner" restriction, prohibitions on false or misleading advertisements and proposals of illegal transactions.[7] In our view, the proper test to be applied to Willingboro's ordinance is to determine whether or not there is a paramount governmental interest, accomplished with minimal restrictions appropriate to its purpose. We submit that the governmental interest in combating the fear psychology leading to the resegregation of Willingboro requires the ordinance to be upheld.

As indicated in Part I of this Argument, there is a significant governmental interest in maintaining a truly integrated community. The problems of our present society

7. This Court discussses these and other inroads into absolute protection in Part VI of its decision in *Virginia State Board of Pharmacy*. See also the concurring decisions of Chief Justice Burger (425 U.S. at 773) and Justice Stewart (425 U.S. at 775).

in implementing openness in housing, furthering integration and halting resegregation have been discussed in detail in many judicial decisions and scholarly commentaries and have been noted in summary manner in this Brief. Obviously, this is one of the more momentous issues facing our nation. Willingboro's ordinance, in seeking a positive answer to these problems, attempts to further this governmental interest.

The Brief of *amici* A.C.L.U. rejects the assertion that the ordinance advances a significant governmental interest, yet agrees that restrictions on advertising are permissible "when public health and safety necessitate" them (A.C.L.U. Brief-16). Perhaps a nonenunciated reference to the classic situation of a person shouting "fire" in a crowded room and causing panic is meant. See *Schenck v. United States*, 249 U.S. 47, 52 (1919). In any event, it is clear that this limitation of the phrase "public health and safety" cannot be condoned, and that in view of the gravity of the public policy at issue, the public health and safety must include the propriety of action reasonably taken to halt resegregation. Moreover, the words "public health and safety" are usually in the tripartite phrase "public health, safety and welfare." In employing the full phraseology, the efficacy of Willingboro's position becomes additionally evident.[8]

B. *Willingboro's ordinance, in advancing a significant governmental interest, is a reasonable restriction on commercial advertising.*

As indicated, the governmental interest in preventing that which would result in the resegregation of a commu-

8. See *Summer v. Township of Teaneck*, 53 N.J. 548, 551, 251 A.2d 761 (1969), where the New Jersey Supreme Court, in discussing "blockbusting," observed that: "the present setting of racial discord magnifies the insult to the public well-being."

nity is of great moment. This Court has recognized the propriety of restricting First Amendment rights when the mode of expression sought to be curtailed effects a result contrary to the public policy. In *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376 (1973), this Court declined to modify *Valentine v. Chrestensen*, 316 U.S. 52 (1942), because of the public significance attached to sex discrimination in employment "want ads." 413 U.S. at 388. In *Near v. Minnesota*, 283 U.S. 697, 718 (1939), Chief Justice Hughes observed that: "No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." It is the relative significance of the conflicting interests involved which are "important in determining the degree of protection afforded by the (First) Amendment to the speech in question." *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302-3 (1974).

Official action with an adverse impact on First Amendment rights may be justified by a compelling or paramount public interest. *National Association for the Advancement of Colored People v. Button*, 371 U.S. 415, 438 (1963); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 546 (1963).

It is apparent that a paramount public interest is involved in this case. And it is similarly evident that the ordinance imposes the minimum restrictions necessary to accomplish the purpose. See *Elfbrandt v. Russell*, 384 U.S. 11, 18 (1966). Advertisement generally of residences available for purchase was not prohibited; only restrained was the one method giving rise to panic selling—"for sale" and "sold" signs.

In this regard, the distinction between advertising in general and "for sale" and "sold" signs on the front lawns

of residential streets should be noted. Residential areas are "a sanctuary for people," *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974), not ordinarily characterized by commercialism. "For sale" and "sold" signs seek to impose an aspect of commercialism on "the quiet and tranquility of residential thoroughfares." *Kovacs v. Cooper*, 336 U.S. 77, 87 (1949). Residents going to and from their homes have the "for sale" and "sold" signs thrust upon them, even if it is just to walk down the sidewalk to visit with a neighbor, to walk a youngster to school or to take a baby for a ride in a carriage. This imposition of commercialism, not otherwise permitted by the ordinance, intrudes upon residents in a place they do not normally anticipate. See also *Packer Corporation v. Utah*, 285 U.S. 105, 110 (1932), which, in the context of the Fourteenth Amendment, discusses the difference between billboards or signs and other types of advertising.

In *Young v. American Mini Theatres, Inc.*, — U.S. — , 49 L.Ed.2d 310 (1976), an ordinance requiring the dispersal of adult motion picture theaters was upheld. It was noted that a restriction requiring at least a one thousand foot separation between theaters would not "create an impermissible restraint on protected communication" since "[t]he city's interest in planning and regulating the use of property for commercial purposes is clearly adequate to support that kind of restriction applicable to all theaters within the city limits." 49 L.Ed.2d at 30. Willingboro's ordinance, likewise, considers the propriety of advertisement in general versus the propriety of advertisement in a residential zone.

Young also makes it clear that the "content of a particular advertisement may determine the extent of its protection." While the prohibition of "for sale" signs is primarily aimed at the mode of expression rather than its

content, other modes being left unaffected, an analysis will show that the signs are restricted only in part because of their content. Thus, in Willingboro's situation, a hybrid is presented: signs generally did not cause the fear psychology; the advertisement of homes for sale by methods other than signs did not cause the fear psychology; only "for sale" and "sold" signs caused it. This classification of advertisement, based in part on its content, is permitted when weighed against Willingboro's "interest in the present and future character of its neighborhoods . . ." 49 L.Ed.2d 327. As observed by Justice Powell in his concurring opinion in *Young*, "[w]ithout stable neighborhoods, both residential and commercial, large sections of a modern city quickly can deteriorate into an urban jungle with tragic consequences to social, environmental, and economic values." Society's interest in protecting established residential integration from the fear psychology stemming from "for sale" signs is like the social interests upheld by this Court in *Young*. The free speech interest at stake here, as in *Young*, "is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate that inspired Voltaire's immortal comment." 49 L.Ed. 2d 326.

Virginia State Board of Pharmacy is not to the contrary. There the public had a "strong interest" in the free flow of information on the comparative prices of prescriptive drugs. Nor is this the complete suppression involved in *Virginia State Board of Pharmacy*. Further, as noted in *Virginia State Board of Pharmacy*, the advertisement in *Bigelow v. Virginia, supra*, "related to activity with which, at least in some respects, the State could not interfere."

The argument of Petitioners that on-premises "for sale" signs are uniquely effective is without merit. The argument relates that the signs, being on site, advertise

"as completely and honestly as any advertising is likely to accomplish" (Petitioners' Brief-27). Of course, this assumes that prospective purchasers, who learn about the availability for purchase of a home through other means, will not choose to view it in person. Petitioners' other assertion that the absence of "for sale" signs will "force the individual citizen to spend an inordinate quantity of time and resources to gain the same information" (Petitioners' Brief-28) defies common sense. Petitioners would have this Court believe that it is easier and quicker to drive around Willingboro to ascertain which homes are available for purchase than to review the central catalog of a realtor or to scan the "Homes for Sale" column in a newspaper. Further, this entire argument completely avoids the dominating presence of "sold" signs.

Amici A.C.L.U. argue that the public has an interest in knowing what homes are for sale in Willingboro, regardless of whether that information is causing a fear psychology leading to a resegregation of the community. *Amici* urge that the response to the fear psychology is "more, rather than less speech," or as Petitioners phrase it, "education."[9] But Willingboro has tried this response and it has not of itself worked. The record reflects a public meeting at the Presbyterian Church in Willingboro on "racial stability and racial problems" captioned "Willingboro—To Sell or Not To Sell" (Jt. App. 184a). Discussions were held before groups such as the Rotary Club, the Chamber of Commerce, and the Jaycees. Township Council joined National Neighbors for added information and had an actively working Human Relations Commission

9. According to the 1970 Census of Population, published by the United States Department of Commerce, the average educational level of residents of Willingboro twenty-five years of age or older was 12.6 years of school completed, and 78 per cent were high school graduates. The national average was 12.1 years of school completed, and 52.3 per cent had graduated from high school. Apparently, education *per se* is not sufficient to keep an individual from acting irrationally.

which is statutorily charged with this education function. Despite these efforts the fear psychology persisted. Willingboro could not wait; it did not have the luxury of being able to spend time individually educating or "indoctrinating" everyone. To argue that education alone may be used to combat fear psychology is to advance a position divorced from practical reality.[10] Willingboro cannot afford to close the barn door after the horse has escaped. The suggestion of *amici*, while worthy is not of itself sufficient: Willingboro requires that every constitutionally permissible means be available to achieve its paramount government interest in preserving residential integration.

Additionally, the speech represented by the "for sale" and "sold" signs is not worthy of constitutional protection when its actual result is the engendering of a fear psychology resulting in Willingboro's resegregation. *Chicago Real Estate Board v. City of Chicago*, 36 Ill. 2d 530, 224 .E.2d 793, 807 (Sup. Ct. 1967). In *Pittsburgh Press, supra*, it was observed that "[w]e have no doubt that a newspaper constitutionally could be forbidden to publish a want ad proposing a sale of narcotics or soliciting prostitutes." 413 U.S. at 388. Both of these activities are illegal. Yet a declaration that one must leave town because of that changing racial composition is equally illegal under the Law Against Discrimination, *N.J.S.A.* 10:5-1 *et seq.*; see *N.J.S.A.* 10:5-12 (k); 42 U.S.C. §3604 (e). Although the "for sale" signs do not expressly relate such an illegal statement, the effect in Willingboro of the abundance of "for sale" and "sold" signs was the same as if it were related. See *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5 Cir. 1973); *United States v. Bob Lawrence Realty,*

10. See also the comment in *Young v. American Mini Theatres, Inc., supra* that "broad statements of principle, no matter how correct in the context in which they are made, are sometimes qualified by contrary decisions before the absolute limit of the stated principle is reached."

Inc., 313 F. Supp. 870 (N.D. Ga. 1970); and *United States v. Mintzes*, 304 F. Supp. 1305 (D. Md. 1969) (which held that there was a permitted restriction on free speech in an anti-blockbusting context). Signs which on the surface may be innocent but which, because of the way the public perceives them, result in a situation strongly contrary to the public interest should not be automatically afforded a superior Constitutional protection.

Willingboro's ordinance, having been enacted to further a significant public interest and being no more restrictive than necessary to accomplish its purpose, is therefore valid.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be affirmed and the constitutionality of Willingboro's ordinance banning "for sale" and "sold" signs should be upheld.

Respectfully submitted,

MYRON H. GOTTLIEB,
KESSLER, TUTEK AND
GOTTLIEB,
325 Farnsworth Avenue
Bordentown, New Jersey 08505
Counsel for Respondents

EXHIBIT A

Willingboro Public Schools
Elementary and Secondary School Enrollment Survey
October 1970-1976

School		Minority 71	72	73	74	75	76	Total 71	72	73	74	75	76
Bookbinder	N	184	268	245	232	306	266	835	848	820	699	698	621
	%	22.0	31.6	29.9	33.2	43.8	42.8						
C.C.Ridge	N	86	84	111	100	124	141	687	635	579	497	486	442
	%	12.5	13.2	19.2	20.1	25.5	31.9						
Garfield	N	65	95	115	117	130	158	737	704	725	648	595	504
	%	8.8	13.5	15.9	18.1	21.8	31.3						
G. East	N	90	120	157	169	163	172	947	944	922	857	783	715
	%	9.5	12.7	17.0	19.7	20.8	24.1						
Hawthorne	N	191	176	198	230	250	258	896	832	778	731	673	602
	%	21.3	21.2	25.4	31.5	37.1	42.9						
King	N	118	148	141	168	178	166	805	838	754	776	768	688
	%	14.7	17.7	18.7	21.6	23.2	24.1						
Millbrook	N	170	206	253	228	247	244	822	744	724	687	646	607
	%	20.7	27.7	34.9	33.2	38.2	40.2						
Pennypacker	N	281	303	320	366	338	352	1009	912	839	783	690	642
	%	27.8	33.2	38.1	46.7	49.0	54.8						
Stuart	N	166	189	175	219	210	241	822	708	733	695	649	638
	%	20.2	26.7	23.9	31.5	32.4	37.8						
Twin Hills	N	169	170	184	206	198	202	858	757	735	703	682	625
	%	19.7	22.5	25.0	29.3	29.0	32.3						
Elementary Total	N	1520	1759	1899	2035	2144	2200	8418	7922	7609	7076	6670	6084
	%	18.1	22.2	25.0	28.8	32.1	36.2						
A.Levitt JR. H.S.	N	311	303	388	392	517	546	1550	1548	1545	1466	1422	1347
	%	20.1	19,6	25.1	26.7	36.4	40.5						
Memorial JR. H.S.	N	313	326	464	603	619	656	1942	2063	2016	2034	2003	2006
	%	16.1	15.8	23.0	29.6	30.9	32.7						
J.F.Kennedy SR. H.S.	N	495	714	852	572	432	468	2713	2981	3062	2051	1502	1472
	%	18.2	24.0	27.8	27.9	28.8	31.8						
WHS SR. H.S.	N				318	560	559				934	1574	1623
	%				33.5	35.6	34.4						
Secondary Totals	N	1119	1343	1704	1885	2128	2229	6205	6592	6623	6485	6501	6448
	%	18.0	20.4	25.7	29.1	32.7	34.6						
Grand	N	2639	3102	3603	3920	4272	4429	14623	14514	14232	13561	13171	12532
	%	18.0	21.4	25.3	28.9	32.4	35.3						

EXHIBIT "A"